

(2007) 12 KAR CK 0007

In the Karnataka High Court

Case No : Criminal Revision Petition No. 408 of 2005

Latha K. Nair

APPELLANT

Vs

Gold Mohar Foods and Feeds Ltd.

RESPONDENT

Date of Decision : 17-12-2007

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 139

Citation : (2008) 4 BC 571 : (2008) CriLJ 1542 : (2008) ILR (Kar) 1883 :
(2008) 3 KarLJ 451 : (2008) 1 KCCR 147

Hon'ble Judges : K. Ramanna, J

Bench : Single Bench

Advocate : Vijayam Alakkat, for P and V Assts, for the Appellant; S.N. Bhat, for the Respondent

Final Decision : Dismissed

Judgement

K. Ramanna, J.—This revision is directed against the judgment and order of dismissal of Criminal Appeal No. 762/2004 dated 21.2.2005 passed by the F.T.C. No. VI, confirming the judgment and order of conviction passed by the 16th Addl. CMM, Bangalore City in CC. No. 34870/2001 dated 12.8.2004 and reversing the findings.

2. The case of the respondent/complainant is that he is engaged in the business of manufacture and sale of various types of animal feeds and the petitioner/accused who is in the business of sale of animal feeds periodically purchased the animal feeds on credit basis from the respondent/complainant. The petitioner/accused issued a cheque bearing No. 104893 dated 17.4.2001 for a sum of Rs. 1,80,395-21 ps., drawn on Indian Bank, Bharanikkavu, towards the amount due for supply of feeds on credit basis and when the said cheque was presented by the complainant through their banker State Bank of India, Byatarayanapura, Mysore Road Branch, Bangalore, for realisation on 18.4.2001, it was dishonoured and returned un-enchased for the reason that the account relating to the said cheque was closed and the said factum was informed through endorsement

dated 21.4.2001 and the said fact was communicated to the complainant through Debit Slip dated 4.5.2001 and thereafter, the complainant got issued a legal notice to the accused on 16.5.2001 calling upon the petitioner to pay the amount due towards dishonoured cheque and the said notice was served on the accused vide reply notice dated 2.6.2001 and in the said reply notice, she had taken baseless and frivolous grounds for non-payment of the amount due to the complainant and failed to make payment. Hence, a complaint was lodged.

3. The trial Court took cognizance of the case u/s 138 of the Negotiable Instruments Act and issued process to the accused. The accused appeared before the Court and pleaded not guilty and claimed to be tried. In order to prove the case, the Accounts Officer of the complainant's company examined as P.W. 1 and got marked Exs. P.1 to 11 and after closure of the evidence, statement of the accused was recorded u/s 313 Cr.P.C. The trial Court after consideration of the evidence placed on record, convicted and sentenced the petitioner/accused to pay Rs. 1,85,000/- failing which she shall undergo imprisonment for 3 months and out of the amount deposited Rs. 1,80,000/- to be paid to the respondent and Rs. 5,000/- to be credited to the State Exchequer as fine amount. Assailing the said judgment and order of conviction, the petitioner/accused challenged the same before the FTC-VI at Bangalore in Criminal Appeal No. 762/2004, which came to be dismissed. Therefore, the petitioner has come up with this revision petition praying to allow this petition by setting aside the order of dismissal of Crl. Appeal No. 762/2004 and also the order passed in CC. 34870/2001.

4. Heard the learned Counsel appearing on both sides and perused the records. Learned Counsel for the revision petitioner submitted that there was no outstanding liability to the extent of the cheque amount as alleged by the respondents and the petitioner never received a copy of any distributor ledger register on 1-4-2000 and she did not issue the cheque on 17-4-2001, infact, the respondent/complainant withheld the distributor ledger register from producing before the Court. Infact, the respondent has taken six cheques from the revision petitioner on 20-2-2000 as security in respect of the credit transaction prevailing between the parties. It is further argued that when the revision petitioner closed her business she sent a stop payment letter to the Bank after giving intimation to the complainant. It is further argued that respondent/complainant failed to examine the officer of the bank. Therefore, provisions of Section 138 of the Negotiable Instruments Act is not at all applicable to the case on hand. This revision petitioner has clearly stated in her evidence that she is not due to pay the sum of 1,80,395-21 ps., to the complainant but the appellate Court has wrongly observed in its judgment at Para. 12 by stating that nothing worthwhile has been elicited to rebut the evidence of P.W. 1 as well as presumption arising in favour of the complainant, which is incorrect and illegal. Infact the evidence placed by D.W. 1 has rebutted the presumption and also the evidence of complainant/respondent. Therefore, prays that the matter may be allowed by setting aside the judgment passed by both the Courts below.

5. In support of his contention, learned Counsel for the petitioner relied upon a decision of the Supreme Court reported in case of Kundan Lal Rallaram v. Custodian, Evacuee Property, Bombay AIR 1961 SC 1316 wherein, it has been stated thus:

Section 118 lays down a special rule of evidence applicable to negotiable instruments. The presumption is one of law and thereunder a court shall presume inter alia, that the negotiable instrument or the endorsement was made or endorsed for consideration. In effect it throws the burden of proof of failure of consideration on the maker of the note or the endorser, as the case may be. The phrase "burden of proof" has two meanings - One, the burden of proof as a matter of law and pleading and the other the burden of establishing a case.

6. He has also relied upon another decision reported in case of Shreyas Agro Services Pvt. Ltd. v. Chandrakumar S.B. AIR 2006 KANT 1168. wherein, it has been held thus:

Dishonour of cheque - words "for discharge of any debt or other liability in Section 138 - Should be interpreted to mean current existing or past ascertained liabilities - Appellant - Company supplied products on credit to dealers - Dealers required to deposit signed blank cheques as a security for credit supply - Such cheques issued in respect of future liabilities not in existence as on the date of cheque would not attract prosecution u/s 138 of N.I. Act.

7. On the other hand, learned Counsel for the respondent argued that if the cheque has been issued as security, the reply given by her is quite contrary. Moreover, the petitioner has not filed a complaint nor taken any action against the respondent for not returning the cheque. When there is an admission by the accused himself in both pleadings and evidence that he issued the cheque, then it is to be presumed that the revision petitioner issued those cheques for legally recoverable debt. Even if the accused pays part of the cheque amount the holder in due course is entitled to file a case or complaint u/s 138 of the Negotiable Instruments Act after its bouncing. There is a concurrent finding recorded by the Courts below holding that the revision petitioner issued the cheque. In this behalf, learned Counsel for the respondent relied upon a decision reported in case of Dr. Sampathkumar B.V. Vs. Ms. Dr. K.G.V. Lakshmi, GCIM, Lakshmi Health Centre, wherein it has been held thus:

"Cheques issued as Security" Cheques issued only as security for repayment of the loan and blank cheques issued - complaint dismissed - legality of dismissal challenged - Held - The dismissal of the complaint on the plea that it was issued only as security and hence no prosecution would lie is an untenable view. A cheque whether issued for repayment of loan or as security makes no difference u/s 138 of the Act. In the event of dishonour, legal consequences are same without distinction. When once issue of cheque is proved, a presumption u/s 139 of the Act would arise with regard to consideration.

8. I have carefully examined the materials placed on record. After considering

the documents and hearing the arguments advanced by the learned Counsel appearing on both sides, the point that arises for my consideration and decision is:

Whether the findings recorded by the Courts below that the petitioner is guilty of the offence punishable u/s 138 of the Negotiable Instruments Act is incorrect or illegal?

9. Admittedly, the respondent is a producer of animal foods and feeds and the revision petitioner had a transaction with the respondent. Of course, at the time of filing the complaint, ledger accounts has been produced by the respondent before the trial Court. Subsequently, those ledgers were returned at the request of the respondent/complainant. Before filing the private complaint or bouncing the cheque, respondent/complainant issued a demand notice as per Ex. P.9 which was duly served and reply was sent through lawyer by the petitioner admitting that the complainant and the respondent had relationship with regard to the sale and purchase of animal feeds. According to the petitioner, she had issued three blank cheques as security. The contention of the learned Counsel for the revision petitioner is that she was not due to the complainant and when she terminated the transaction with the complainant she demanded the complainant to return the cheques taken from her as security and she also informed her banker not to honour those cheques but inspite of that the complainant filled up the blank cheques and presented the same for encashment and got it dishonoured but the reply sent by the petitioner indicates that the respondent herein closed the account without properly explaining the reason, the petitioner is said to have stopped the business since she had no interest and requested to return the blank cheques and also requested the respondent by a letter promising for settlement of account on verification of the books of accounts and vouchers. The revision petitioner had accepted about the transaction of purchasing the animal foods. The petitioner has given a letter to the bank to stop payment and has produced a carbon copy of the letter addressed to the Manager of the Bank. The respondent herein who is a complainant before the trial Court filed his affidavit stating about the earlier transaction which took place between the petitioner and the respondent. The complaint was filed on 7.6.2001 along with the a copy of the ledger account to prove that the petitioner herein purchased the animal foods from the respondent. This Court has clearly held in case of Dr. B.V. Sampath kumar v. Dr. K.G.V. Lakshmi (supra) that a cheque issued for repayment of the loan or security makes no difference u/s 138 of the Negotiable Instruments Act if dishonoured, then the accused is liable to pay. It is not the case of the revision petitioner that she has subsequently discharged the amount due by her. The presumption available for the complainant u/s 138 of the Negotiable Instruments Act should be rebutted. The only question to be considered by this Court is whether the revision petitioner was successful in his attempt to rebut the evidence. The materials placed on record does not disclose that though she had purchased the animal foods to the tune of 1,80,395-21 ps., subsequently, she has paid the same and no such evidence is placed by the

revision petitioner/accused. The respondent herein has produced 11 documents before the trial Court and at the time of filing the complaint, original distributor ledger register is produced. Therefore, now she cannot say that the original books have not been produced. When the revision petitioner has given reply that earlier she had transaction with the respondent by purchasing animal feeds and those cheques were said to have been issued as security for the earlier transaction, the burden lies on her to prove that as on the date of dishonour of the cheque the petitioner was not in due of any amount to the respondent. But in the instant case, the petitioner has failed to prove her case. More over, she has not come forward to adduce herself for cross-examination. Hence, in view of the above facts and circumstances of the case and also the law laid down by the Apex Court in the aforesaid decision relied on by the counsel for the respondent, I do not find any good reasons to interfere with the order under challenge and there is no incorrect or illegal findings recorded by the Courts below after appreciation and re-appreciation of the entire records, the Courts below have given concurrent finding holding that the revision petitioner herein fails to rebut the presumption available in favour of the respondent/complainant. Hence, the petition is liable to be dismissed.

Accordingly, this criminal revision petition is dismissed.